Filed 6/16/09 In re D.P. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re D.P. et al., Persons Coming Under the Juvenile Court Law.	B212682 (Los Angeles County Super. Ct. No. CK53054)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.S., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Jacqueline Lewis, Commissioner. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, and Timothy M. O'Crowley, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Defendant L.S. (Mother) appeals from orders of the juvenile court terminating her parental rights with respect to her five children: D.P., J.P., M.P., D.E.P. and S.G., under Welfare and Institutions Code section 366.26.[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

After investigation of a child abuse hotline referral concerning D.P. (age 12), J.P. (age 11), M.P. (age 9), D.E.P. (age 7), and S.G. (age 5), (collectively, the children), the Los Angeles County Department of Children and Family Services (DCFS) filed a juvenile detention petition pursuant to section 300, alleging serious physical harm (*id*., subd. (a)), failure to protect (*id*., subd. (b)), and abuse of sibling (*id*., subd. (j)) as to the children as the result of Mother's actions or failures to act. The petition alleged that Mother had a history of violent altercations with her male companion, J.R., in the presence of the children, and recently, in August 2006, in the presence of the children, J.R. struck Mother, injuring her lip, and then struck her again, injuring her forehead. The petition further alleged that J.R. physically abused the children and Mother failed to take action to protect the children from J.R.'s violence, in that she allowed J.R. unlimited access to the children.

According to the September 18, 2006 detention report, the children had been declared dependents of the court previously through dependency proceedings initiated in July 2003 (2003 petition). The 2003 petition alleged that there was a history of domestic violence against Mother by J.R. in the presence of the children causing injuries, including lacerations, bruises and a black eye, to Mother, and J.R. had pulled a gun on Mother in the presence of the children. The petition also alleged that, although Mother had filed a

---

[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise identified.

restraining order against J.R., she continued to have contact with him. The juvenile court sustained the 2003 petition. Ultimately, the children were returned to Mother's custody in August 2004 after Mother had completed the reunification plan and otherwise complied with the court's orders.

During interviews by DCFS children's social workers (CSWs) prior to the detention hearing, the children reported that they did not want to live with Mother, but wanted to reside with their maternal grandmother (Grandmother) and visit with Mother if J.R. was not present. D.P. stated, "'I don't want to live with my mom.' 'I have always lived with my "Granny" and she's always been there for me.' 'I want to live with my "Granny."'" J.P. stated, "'I don't want to live with them [Mother and J.R.].' 'I want to live my "Granny."'" M.P. stated, "'I want to live with my "Granny."' 'I want to visit my mom, but I don't want to live with her.'"

In the course of the interviews, the CSW also learned that, during the August 2006 incident, J.R. grabbed D.E.P. and bruised his face by pushing it into a cabinet, shoved J.P.'s face into the cabinet, pushed D.P. into the television, and hit M.P. During the prior six years, the children had largely lived with Grandmother and she had been their primary caregiver. Grandmother reported that S.G. did not go with the other children for the August visit with Mother.

On September 18, 2006, in the detention hearing, the juvenile court ordered the children to be removed from Mother's custody and placed with Grandmother. The court also found that W.P. was the presumed father of D.P., J.P., M.P., and D.E.P., and V.G. was an alleged father of S.G. (collectively, the fathers).[2]

On October 10, 2006, the jurisdiction/disposition hearing began. DCFS submitted its jurisdiction/disposition report to the court. The report recited statements from further interviews with the children and Grandmother about the history of J.R.'s violence against Mother and the children and Mother's lack of action to keep the children safe. In the interviews, each of the children stated that he or she wanted to live with Grandmother.

---

[2] The fathers are not parties to this appeal.

D.P. (then age 13) stated, "I want to stay with my grandmother because I feel that I'm safer here than with my mom." J.P. (then age 11) stated, "I feel like I'm in a safe environment with my granny. . . . I don't want to visit my mom or talk to her. . . . She don't know how to take care of herself or me. She keeps going back to the same thing. She keeps getting beat by [J.R.]." M.P. (then age 10) stated, "The person I really want to live with is my grandmother. Because she treats me right. She gets us school clothes and back packs. I don't want to live with my mom until she breaks up with [J.R.]. . . . Now with [J.R.] my life is terrible. . . . The truth is he hits on my mom." D.E.P. (then age 7) stated, "I want to live with my grandmother because my mother whoops me a lot and [J.R.] has been fighting with her." S.P. (then age 5) stated, "I like living with my granny." Grandmother stated that she would be the children's legal guardian or, "[i]f down the line it comes to adoption, I'm okay with either."

In its December 18, 2006 interim review report, DCFS included statements from an interview earlier in December with the children whose presumed father was W.P. regarding their feelings about being released to his custody. D.P. stated, "Right now I would like to stay with my grandmother." J.P. stated, "I want to be with my granny. She's always been there for me." D.E.P. stated, "I don't want to let my granny down. No she didn't tell me that (it would let her down), I just decided that. I don't want to leave her."

On February 2, 2007, the jurisdiction hearing was completed. Mother submitted her signed written waiver of rights and pled no contest to the petition as amended to delete the allegations of serious physical harm (§ 300, subd. (a)) and abuse of sibling (§ 300, subd. (j)). The juvenile court declared the children to be dependents of the court and ordered DCFS to provide referrals for Mother for conjoint counseling with the children.

Prior to the disposition hearing, DCFS submitted a report dated March 2, 2007 to the court which included a letter of approval of Grandmother's home for placement of the children.

In an addendum report dated April 26, 2007, DCFS revealed that it had obtained a preliminary investigation of spousal abuse report, dated January 21, 2007, naming Mother as the victim and providing data consistent with J.R. being the suspect and an admission by Mother that she had talked with J.R. by telephone in early April 2007.

On April 26, 2007, in the contested disposition hearing, the juvenile court ordered the children to be placed in Grandmother's home, with unmonitored visitation for Mother. The court found that Mother had made partial progress toward resolving the issues necessitating the detention and ordered Mother to attend an approved domestic violence support group, parent education, individual counseling, and conjoint counseling with the children. The court found that a condition of reunification was that Mother demonstrate the ability to meet the children's physical and emotional needs and the ability to provide stable and appropriate housing for them.

In its October 18, 2007 interim review report, DCFS reported that Mother had been consistent with her weekly visitation, had completed a parenting education program, and continued participating in her counseling and domestic violence programs. Also, Mother had obtained a restraining order against J.R. and now had appropriate housing. All of the children had stated that they wanted to live with Mother. DCFS recommended the children be returned to Mother's care.

At an October 31, 2007 hearing, the juvenile court ordered that the children be returned to Mother's custody, that Mother's family maintenance services be continued, and that the children remain dependents of the court under its jurisdiction.

On February 1, 2008, the children were detained again after DCFS received information that, shortly after the children were returned to her in October 2007, Mother moved to a friend's home in Lancaster that was near J.R.'s home. She continued contact with J.R. and allowed him to have access to the children. DCFS filed a section 387 supplemental petition for the detention and placement of the children with Grandmother. The petition alleged that on January 3, 2008 and numerous prior occasions, Mother allowed J.R. to have unlimited access to the children at his home, in violation of the juvenile court's orders.

In its April 2, 2008 jurisdiction/disposition report, DCFS recounted Grandmother's statement that Mother pretended to have an apartment in Long Beach in order to reunify with the children, but moved to Lancaster near J.R. about two weeks after the children were returned to her. The children told Grandmother that they were living at the home of Mother's friend and J.R.'s house, depending on whether Mother was having problems with the friend or with J.R. They told Grandmother that Mother was hitting them.

The CSW's interviews with the children were consistent with Grandmother's statement and revealed that the children wanted to stay with Grandmother. D.E.P. stated that he wanted to stay with Grandmother. J.P. stated that he could be with Mother, but "we need to have our own place," and that J.P. was happy with Grandmother. M.P. did not want to go back and live with Mother for a while to give Mother time to get her own place. S.P. wanted to stay with Grandmother. Grandmother was willing to be a permanent caretaker for the children and an adoption home study for Grandmother's home had been in progress but stopped when the children were returned to Mother.

After the children's second detention, Mother had not visited with them other than once briefly to bring some belongings. DCFS reported Mother was not being cooperative with its staff.

In the April 2, 2008 hearing on the section 387 supplemental petition, the juvenile court sustained the petition and ordered that Mother's visitation be monitored.

At the May 7, 2008 contested disposition hearing, DCFS reported to the juvenile court that from April 2 to May 7, 2008, Mother had had two monitored telephone calls and one monitored visit, and problems arose in all of them. During the monitored visit, Mother was extremely confrontational, making it impossible for the CSW to speak with her. In telephone calls, Mother became angry at one of the children over money and made threats.

The juvenile court ordered that the children remain dependents of the court with monitored visitation for Mother. The court observed that "since 2003, mother has had 21 months of family reunification services, nine months of family maintenance, and we are

exactly where we were in 2003." The court ordered termination of Mother's family reunification services, set a section 366.26 permanency plan hearing, and ordered DCFS to initiate an adoptive home study.

In its June 4, 2008 interim review report, DCFS included Grandmother's statement that she spoke to each child separately, and each child expressed a desire to be adopted by Grandmother rather than have any other permanent plan. D.P. and J.P. told the CSW that they wanted to be adopted by Grandmother. CSWs continued to work on the adoption home study report. The children continued to do well in Grandmother's care and had gotten back in their routine of living with Grandmother as they had for a significant part of their lives. Mother had not visited with the children since April 17, 2008.

In its September 3, 2008 section 366.26 report, DCFS confirmed that Grandmother had been identified as a prospective adoptive parent, had known the children since birth and was willing and able to take responsibility for the children. The children had stated that they want to be adopted by and remain with Grandmother. Mother still had not visited the children since April 17, 2008, and it appeared that Mother would continue to have contact with J.R. in disregard of court orders and DCFS intervention efforts. Thereafter, the adoption home study was approved on September 26, 2008.

On December 3, 2008, the juvenile court began receiving testimony in the contested section 366.26 hearing. In chambers, M.P. (then age 12) testified that the CSW had talked to her about being adopted, and that she told the CSW, "I wouldn't want to go to the stand, because I didn't want to make my mom cry. And I really love my mom. And it's hard to choose for which one to take care of me. Both of them are great, but I'll take my grandma until my mom gets like straight." When asked again, M.P. confirmed she wanted to live with Grandmother. M.P. stated that she had talked with her attorney about the difference between legal guardianship and adoption, but "I might not kind of understand it because I have a lot of things going on in my mind." M.P. stated that she was afraid that if not adopted, she would go to a foster home. M.P. wanted to be able to

keep in contact with Mother, but understood that, if she was adopted, Grandmother would have the authority over such contact and might not allow it.

The parties stipulated that, if called to testify, D.E.P. (then age 9) and J.P. (then age 13) would testify that they have frequent, though not regular, visitation and consistent telephone contact with Mother, they do not believe it is in their best interests to have a legal guardianship, they are requesting a permanent plan of adoption, and believe that Grandmother would allow some continued visitation with Mother. No testimony or representation of testimony was offered from D.P. (then age 15).

After argument, the juvenile court noted that the court had been involved in this case since it originated in 2003 and for five years, the children had been "a part of this court." The court stated that Grandmother "has been the one constant for these children since day one. The one that has consistently wanted what is in the children's best interest, and . . . consistently put their well being in front of everything else . . . . [¶] . . . [S]he has shown me definitely that she will do whatever she needs to do to make sure these children are safe and protected." The juvenile court stated that "I have three children over 12 that are opting for [permanence with Grandmother], even though they love their mother."

The juvenile court found by clear and convincing evidence that the children were adoptable, that Grandmother was the prospective adoptive parent, and it would be detrimental for the children to be returned to Mother. The court ordered termination of the parental rights of Mother and the fathers, adoption as the permanent plan, and continued jurisdiction, with the permanent plan likely to be finalized by June 3, 2009.

DISCUSSION

Mother contends that the juvenile court committed reversible error, in that the court did not adequately explore the children's understanding of and feelings about adoption. Consequently, Mother claims, the court's finding, by clear and convincing evidence, that the children were adoptable is not supported by substantial evidence. A

further result, Mother asserts, is that the court did not adequately assess the wishes of the three older children[3] before the court could rule out any possible exception to termination of parental rights due to objections by a child over 12 years of age, pursuant to section 366.26, subdivision (c)(1)(B)(ii).[4] We disagree.

There is no merit to Mother's contention that there was insufficient evidence that the children were adoptable. In reviewing the juvenile court's finding of adoptability, we must determine whether there is substantial evidence from which a reasonable trier of fact could have made the finding by clear and convincing evidence. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.)

It is undisputed that Grandmother was ready, willing and had the ability to meet the children's needs financially, emotionally and for stability. The adoption home study had evaluated Grandmother and her home pursuant to statutory requirements and approved Grandmother as an adoptive parent. Likewise, no health or other issue was raised regarding any of the children's suitability for adoption. The only impediment to adoption was freeing the children for adoption by terminating Mother's parental rights. Sufficient evidence before the juvenile court justified the finding by clear and convincing evidence that the children were adoptable. (*In re Baby Boy L.*, *supra*, 24 Cal.App.4th at pp. 610-611.)

Mother's contentions appear more closely related to whether the juvenile court fulfilled its duty to "consider the wishes of the child" in making its determination of

---

3 At the time of the section 366.26 hearing, D.P. was 15, J.P. was 13, and M.P. was 12 years of age.

4 Section 366.26, subdivision (c)(1)(B)(ii) provides: "(c)(1) If the court determines . . . by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. . . . . Under these circumstances, the court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] . . . [¶](ii) A child 12 years of age or older objects to termination of parental rights."

whether to terminate Mother's parental rights. (§ 366.26, subd. (h)(3); *In re Leo M.* (1993) 19 Cal.App.4th 1583, 1592.) Evidence of a child's wishes may appear in a child welfare agency's reports to the court and may be, but is not required to be, by direct testimony at the section 366.26 hearing. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1334.) The record shows that the juvenile court considered the children's placement preferences in numerous hearings via then-current DCFS reports submitted to the court over the course of the dependency proceedings from their initiation in 2006 through 2008. At the section 366.26 hearing, there was testimony from two of the three children who were 12 years of age or older.

Our review of the juvenile court's conclusion that the children favored adoption by Grandmother is deferential; it was up to the juvenile court to determine the evidence that accurately represented the wishes of each child with regard to the adoption. (*In re Christopher L., supra*, 143 Cal.App.4th at p. 1335.) The various pieces of evidence available to the court uniformly confirmed the children's bond with Grandmother and desire to live with her rather than with Mother. Nothing in the record shows that any of the children ever voiced an unequivocal objection to being adopted by Grandmother. The evidence afforded the court a reasonable basis for concluding that the children favored adoption. (*Ibid.*)

We do not construe the expression by any child of desire to continue to have contact with Mother as being contrary to the child's favoring adoption. (*In re Christopher L., supra*, 143 Cal.App.4th at p. 1335.) Consequently, on review of the entire record, we conclude that substantial evidence supports the conclusion that the juvenile court fulfilled its duty to consider the wishes of each child (§ 366.26, subd. (h)(3)) and supports its finding that the children favored adoption by Grandmother. (*In re Christopher L., supra*, at p. 1335.)

Our conclusion also undermines Mother's contention that the juvenile court did not adequately assess the wishes of the three older children as necessary for the court to rule out any possible exception to termination of parental rights due to objections by a child over 12 years of age, pursuant to section 366.26, subdivision (c)(1)(B)(ii). The

substantial evidence standard of review has been used to address a juvenile court's finding that the over-12 objection exception does not apply. (*In re Christopher L., supra*, 143 Cal.App.4th at p. 1335.)

In any event, adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) The over-12 objection exception as well as the other "statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption." (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

Also, once the juvenile court has found by clear and convincing evidence that the child should not be returned to the parent and the child is likely to be adopted, it is the parent's burden, not the burden of DCFS or the court, to prove an exception exists compelling a conclusion that parental rights should not be terminated. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 574.) Mother makes no claim that she provided sufficient evidence to show such an over-12 objection exception applied as to any of the children.

On appeal from an order pursuant to section 366.26 terminating parental rights, the question is whether the juvenile court abused its discretion in deciding to terminate parental rights. (*In re Jessie G.* (1997) 58 Cal.App.4th 1, 9; *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1801.) The court's decision will be upheld if supported by substantial evidence. (See *In re Autumn H., supra*, 27 Cal.App.4th at p. 575; *Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 250.)

For the foregoing reasons, we conclude that the juvenile court's findings regarding adoptability and termination of parental rights, as well as its omission of a finding that the over-12 objection exception existed, are supported by substantial evidence. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) Accordingly, we conclude that the juvenile court did not abuse its discretion in ordering termination of parental rights. (*In re Jessie G., supra*, 58 Cal.App.4th at p. 9; *In re Jose V., supra*, 50 Cal.App.4th at p. 1801.)

DISPOSITION

The orders are affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.